

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4508 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHETANBHAI N SHAH

Versus

SECRETARY

Appearance:

MR DD VYAS for Petitioner
MR K.C.KODEKAR AGP for Respondent No. 1
MR ANANT S DAVE for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3
MS PROMILA SAFAYA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. Heard the Learned Counsel for the petitioner Mr.

U.M.Panchal for Learned Senior Counsel Mr. D.D.Vyas.
The petitioner has prayed for following reliefs :

- A. That this Hon'ble Court may issue appropriate writ or order quashing the order Annexure-A dated 5-7-98, passed by the 1st respondent and restraining the respondents from demolishing the structure or taking possession of the land in dispute.
- B. That this Hon'ble court may be pleased to grant a writ or order staying the execution of the order dated 5-7-85 passed by 1st respondent, till the final hearing and disposal of this petition.
- C. That this Hon'ble Court may grant any other relief as it may deemed fit and proper and award costs of this litigation.

2. The petitioner prays that this Court should exercise its jurisdiction under Article 226 of the Constitution of India and grant the above relief in view of the averments made in this petition. It is contended by the petitioner that under authorization given to him earlier by two competent authorities, two sheds were constructed but for the third shed, the necessary permission was granted only by the Local-Self Government, but the Collector of Kuttch District has not granted permission. Petitioner is under apprehension that the construction of shed three though is erected with the consent of the Local-Self Government shall be removed. Undisputedly, all these three sheds are occupied by the petitioner, and the same are situated in the vicinity of a hillock Bhujia of Kuttch District. This area is largely occupied by the Indian Army and sensitive from defence point of view. Learned Counsel appearing for the respondent Union of India - Mr. Dave has drawn by attention to the language of N.O.C. granted earlier which is at page -41 of the petition. Mr. Dave has rightly contended that even any authorization could not have been granted to the present petition for the third shed, the same would be in the very language and the condition is incorporated in the letter dated 17th January, 1981 (Page-41). According to Mr. Dave Union of India is not in need to the portion where the shade -3 is constructed at present, but the same falls within 700 mts. of the fort walls is within the prohibited area. So in case of emergency of immediate requirement, the

Union of India may need the area where the impugned construction is erected. According to Mr. Dave, the petitioner can be permitted to continue with the factory site entirely on their own risk and he will be wholly responsible to any damages if caused to the erected structure. Learned counsel appearing for the petitioner Mr. Panchal states that the petitioner is ready and willing to continue with the erected structure at his own will, risk and cost. The petitioner will be wholly responsible for the damages if caused. Learned counsel Mr. Panchal states that in case of emergency he may even vacate this premises and help the Union of India in the event of exigency. I feel that the petitioner should file separate undertaking to that effect within 15 days from now. Learned Advocate for the petitioner states that the petitioner is ready to file an undertaking to that court.

3. In view of the above set of facts and observations, the petitioner's construction of shed-3 can be protected, subject to the above observations and undertaking which the petitioner has to file, as directed hereinabove. In view of the above set of facts, petitioner does not press this petition. The same is disposed of, as not pressed. In case of difficulty, the petitioner is at liberty to file a fresh petition. No costs. Rule is discharged and interim relief granted earlier is to be interpreted and modified accordingly.

(C.K.Buch,J)

(Vipul)